

indarjit Singh Vs. Jaddu and ors.

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Court : Allahabad

Decided On : Nov-07-1932

Reported in : AIR1933All169

Appellant : indarjit Singh

Respondent : Jaddu and ors.

Judgement :

Iqbal Ahmad, J.

1. This is a defendant's appeal and arises out of a suit brought by the plaintiffs-respondents for a declaration that the sale-deed, dated 4th May 1928, executed by Mt. Phulesra and Dhanai Sahu, in favour of the defendant-appellant is not binding on the plaintiffs and other reversioners of Ram Subhag, deceased, after the death of Mt. Phulesra. Ram Subhag was admittedly the last male holder of the property covered by the sale-deed. Mt. Phulesra is the widow of Ram Subhag. The relationship of Dhanai and of the plaintiffs with Ram Subhag will appear from the following pedigree:

SAMBODH SAHU

||||

Mangru Tika Prag Ajodhya

|| _____ |

Ram Subhag || || Dhani

|| Thakur Gaya Dubri defendant, 3.

Mt. Phulesra, wife, || |

defendant 2. | Jaddu, |

Khem Karan plaintiff. |

_____ | _____ | _____

||||

Bhola Parmeshar Ram Kishun, Sheo Saran, Raj Kumar,

|| plaintiff 2. plaintiff 3. plaintiff 4.

Sheo Shankar | _____

_____ | _____

||||

Ramnath. Baijnath. Bishunath. Sheonath.

2. The pedigree was admitted by the parties and a reference to the pedigree shows that Dhanai was the nearest reversioner of Ram Subhag on the date of the execution of the sale-deed and that the plaintiffs were remote reversioners. The sale-deed was with respect to a four annas share in village Dharampur and the consideration for the same was a sum of Rs. 4,656. Out of the sale consideration a sum of Rs. 2,778 was paid in cash by the vendee, the defendant-appellant, to Dhanai and Phulesra, the vendors, before the Sub-Registrar, and the balance of the sum of Rs. 1,878 was left with the vendee for the liquidation or for the payment of the following debts:

1. On account of a usufructuary mortgage, dated 20th April 1922, executed by Mt. Phulesra in favour of the vendee, Indarjit Singh Rs. 899

2. For a pro-note dated 29th July 1926, alleged to have been executed by Mt. Phulesra in favour of the defendant-appellant Rs. 34

3. On account of a mortgage-deed, dated 23rd June 1926, executed by Mt. Phulesra in favour of Jang Bahadur Rs. 600

4. On account of two pro-notes, dated 12th October 1927, and 30th March 1928, executed by Mt. Phulesra and Dhanai in favour of Bindeshri Prasad Rs. 345

Total Rs. 1,878

3. It is common ground that Ram Subhag died as a separated Hindu about 24 years prior to the sale deed in dispute, and that after his death Mt. Phulesra entered into possession of the properties left by him as a Hindu widow. The plaintiffs' case was that the sale-deed was without consideration and without legal necessity, and that Dhanai the nearest reversioner, was in collusion with the vendee, the defendant-appellant, and he joined in the execution of the sale-deed simply at the instance of defendant-appellant. The plaintiffs further alleged that the real value of the property sold was Rupees 10,000. On these alienations the plaintiffs maintained that the sale-deed was not binding on them. The defendant-appellant resisted the suit on the ground that the plaintiffs being remote reversioners had no cause of action for the suit and that the sale-deed dated 4th May 1928, was supported by consideration and

was executed for valid and legal necessities of paying up antecedent debts which were taken from time to time for meeting valid necessities and for the marriage of a daughter.

4. He emphasized that the fact that Dhanai the nearest reversioner of Ram Subhag, had joined in the execution of the sale-deed gave rise to a presumption that the sale was justified by legal necessity. He denied the allegation of the plaintiffs that the value of the property in suit was Rs. 10,000, and asserted that the property was not worth more than Rs. 4,656, the consideration for which it was sold. The trial Court overruled the pleas urged in defence. It held that as Dhanai, who was the nearest reversioner, had, by joining in the execution of the sale-deed, precluded himself by his own act from suing the plaintiffs, who were the remote reversioners, were entitled to maintain the suit. It further found that the sale-deed was without consideration and 'certainly there was no necessity.' On these findings it decreed the plaintiffs' suit in terms of the reliefs prayed for in the plaint. The vendee has come up in appeal to this Court and it is argued on his behalf that Dhanai, the next presumptive reversioner, having joined in the execution of the sale-deed and the sale having been made with his knowledge and consent,' there is a strong presumption that the sale was for legal necessity and for purposes justified by law, and that the burden of proving want of legal necessity lay heavily upon the plaintiffs which burden they failed to discharge. It is further argued that the finding of the Court below that the sale was without consideration is not sustainable.

5. Before proceeding to deal with the question whether the plaintiffs have succeeded in proving that the sale itself was not justified by legal necessity, we propose to consider the correctness or otherwise of the finding of the Court below that the sale-deed was without consideration. If that finding stands, it is manifest that it would be unnecessary to deal with the question of legal necessity urged by the learned Counsel for the defendant-appellant. (After considering the evidence as to the several items constituting the consideration for the sale, his Lordship held that the payment of Rs. 4,622 by the vendee to the vendors or their creditors was proved and to that extent the sale was supported by consideration). The next question that arises for consideration is whether the sale is binding on the

plaintiffs. When an alienation made by a Hindu widow or a Hindu father or manager of a joint Hindu family is assailed by the person entitled to challenge the same, the question that arises for consideration is whether the alienation itself was one justified for legal necessity, and the fact that the transferee is unable to prove that a small portion of the consideration was applied for purposes of legal necessity, is no ground for setting aside the alienation: vide *Sri Kishan Das v. Nathu Ram* . In the case of transfer made by a Hindu widow in possession of her husband's estate this burden can be discharged by the transferee either by proving that there was pressing necessity for the transfer or such necessity as is recognized as lawful by Hindu law, or by proving that the alienation was made by the widow with the consent of the whole body of persons constituting the next reversioner. But an exception to this rule is furnished by cases in which the alienation is made by the widow, not with the concurrence of the entire body of reversioners but with the consent of only the nearest reversioner. In such cases the consent of the nearest reversioner to the alienation affords presumptive proof of the fact that the alienation itself was justified by legal necessity and therefore the burden initially does not lie on the transferee to show that the alienation was for legal necessity: vide *Rangasami Gounden v. Nachiappa Gounden* AIR 1918 PC 196. The consent of the nearest reversioner to the alienation is however not conclusive proof of the existence of legal necessity. It merely raises a presumption of existence of such necessity and the presumption is a rebuttable one: vide *Muhammad Said Khan v. Darshan Singh* : AIR1927 All835 .

6. As the sale assailed by the plaintiffs in the present case was made jointly by Mt. Phulesra and Dhanai Sahu, the nearest reversioner, the defendant-appellant started with a presumption in his favour that the sale itself was justified by legal necessity and the burden of proving the contrary lay on the plaintiffs-respondents. It is to be noted however that the only presumption in such cases is that the alienation itself was justified by legal necessity and once that presumption is rebutted, there is no presumption that all or any of the items of consideration for the alienation were for justifiable purposes. The question therefore arises-has that presumption that the sale was justified by legal necessity been displaced by the evidence in and the circumstances of the present case?

7. A perusal of the sale-deed leads to the conclusion that the immediate cause for the sale of the property was the supposed necessity to raise the sum of Rs. 2,778 in cash. The other items mentioned in the sale-deed were previous debts. It appears from para. 8 of the written statement and the statement that was made by the vendee under Order 10, Rule 1, Civil P.C., that the sum of Rs. 2,778 was raised for the purpose of meeting the expenses of the marriage of Mt. Phulesra's daughter. The plaintiff's case was that Ram Subhag died issueless and that after his death Mt. Phulesra married Rameshwar Teli, and that two daughters were born to her as a result of this union. The defendant-appellant did not deny that Mt. Phulesra married Rameshwar Teli in sagai form after the death of Ram Subhag and stated that he could not say whether the 'daughter was born to Ram Subhag or to anyone else.' Indeed, the plaintiffs' evidence on the point remained entirely un rebutted. The defendant-appellant did not examine himself as a witness in the case, and none of his witnesses contradicted the plaintiffs' statement on this point. On the contrary, Bachoo Patak, defendant's witness, admitted that Mt. Phulesra had her sagai with Rameshwar Teli. Indradeo another witness of the defendant, admitted that Mt. Phulesra has got two daughters and they are minors and unmarried. It is common ground that Ram Subhag died 24 years before the suit. It follows that the minor daughters of Mt. Phulesra could not be the daughters of Ram Subhag. It is manifest therefore that expenses of the marriage of those daughters could not constitute legal necessity justifying an alienation of Ram Subhag's property. Therefore the conclusion is irresistible that on 4th May 1928, the date of the execution of the sale-deed, there was no pressing necessity for the sale of Ram Subhag's property. Thus the presumption with which the defendant-appellant started, because of Dhanai having joined with the widow in the execution of the sale-deed, was displaced. The position therefore is that the sale itself was not justified by legal necessity, and was not binding on the plaintiffs-respondents, and the plaintiffs were entitled to the declaration that the sale was not binding on them and on the other reversioners except Dhanai.

8. The question however remains whether that declaration ought to be granted to the plaintiffs unconditionally. If any amount of the sale consideration is found to be for legal necessity, the plaintiffs must, as a condition precedent to the declaratory decree prayed for, repay that amount to the vendee when they become entitled to

the possession of the property after the death of the widow and Dhanai. It is manifest from the observations made above that the burden of proving the validity of the items constituting the sale consideration lay on the vendee, the defendant-appellant. We have already held that the sum of Rs. 2,778 was not for legal necessity. The other debts that were sought to be liquidated by the execution of the sale-deed in dispute and which are mentioned in the sale-deed were debts incurred by Mt. Phulesra alone or in conjunction with Dhanai. Neither of those debts were incurred by Ram Subhag, the last male holder. There is no evidence on the record to show that the income of the property left by Ram Subhag was not sufficient for the justifiable needs and for the maintenance of Mt. Phulesra. The recital in the mortgage-deed that the amounts advanced by the respective mortgagees were required for payment of Government revenue or for the purchase of bullocks was no evidence against the plaintiffs-respondents. Neither Mt. Phulesra nor the defendant-appellant gave evidence in the case. In short, there was no evidence to prove that any of the items constituting the sale consideration were for legal necessity. The plaintiffs were therefore entitled to the unconditional decree granted to them by the Court below. The decree of the lower appellate Court however requires modification in one respect. The lower appellate Court has decreed that the sale-deed is not binding on the plaintiffs and other reversioners of Ram Subhag deceased. Dhanai is undoubtedly bound by the sale. He joined in the execution of the sale-deed and received a portion of the consideration of the same. He therefore is estopped from assailing the validity of the sale-deed. The decree of lower appellate Court will therefore be modified by the addition of the words 'except Dhanai Sahu' in line 9, p. 14 of the printed record after the words 'other reversioners of Ram Sub-hag deceased.' In other respects the appeal fails and is dismissed with costs.